UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

SSA MARINE through its related company SSA PACIFIC

and

Case 19-CD-502

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, DISTRICT LODGE 160, LOCAL LODGE 289, AFL-CIO

and

INTERNATIONAL LONGSHORE AND WAREHOUSE UNION, LOCAL 19, AFL-CIO

POST-HEARING 10(k) BRIEF ON BEHALF OF SSA MARINE

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Pursuant to Section 10(k) of the National Labor Relations Act, and the Rules and Regulations of the National Labor Relations Board (NLRB), the Employer, SSA Marine¹, hereby submits its Post-Hearing Brief with respect to the above-referenced jurisdictional dispute concerning the maintenance and repair work on SSA Marine's/SSA Pacific's (SSA's) stevedoring and terminal service power equipment used for passenger-ship operations at Terminal 91 in Seattle, Washington. Pursuant to an extension obtained for the filing of this brief from the Executive Secretary of the National Labor Relations Board ("NLRB" or "Board"), the brief is due to the Board on July 24, 2009.

I. INTRODUCTION

The International Longshore and Warehouse Union, Local 19 ("ILWU") asserts its members are entitled to perform maintenance and repair work on SSA's passenger stevedoring and terminal service power equipment at Terminal 91 in Seattle, Washington. SSA also asserts that ILWU, Local 19's members are entitled to perform this work because SSA, through its membership in a multi-employer bargaining organization, the Pacific Maritime Association ("the PMA"), specifically assigned all maintenance and repair (M & R)work on SSA owned or leased stevedore cargo handling equipment at new facilities to the ILWU in exchange for permitting PMA member employers to introduce

¹ All parties stipulated before and at the Hearing that SSA Marine, and its subsidiary, SSA Pacific, would be considered to operate as a single Employer for the purposes of the Hearing. The parties further stipulated that for purposes of the Hearing, SSA Marine was the employer of the ILWU represented employees of Harbor Industrial, the company with which SSA Marine contracted to perform the disputed work.

robotics² onto the waterfront among other concessions in the 2008 ILWU-PMA collective bargaining negotiations with the ILWU. [Jt. Exhibit B.]

The PMA negotiates and administers maritime labor agreements with the ILWU on behalf of its seventy one members who include cargo carriers, terminal operators and stevedore companies that operate along the West Coast (California, Oregon, and Washington). The PMA performs payroll functions, some training functions, some record retention function and some other functions related to the administration of the labor agreements on behalf of its member companies. [Tr. 15.] The PMA negotiates with the ILWU a coast-wide agreement entitled the ILWU-PMA Pacific Coast Longshore Contract Document ("PCLCD"). [Jt. Exhibit B.] Although the PCLCD is supplemented by other agreements (e.g., Port Supplements and Working Rules), it is the contract relevant to the instant dispute. The agreement concerning M & R work is memorialized in Sections 1.72 of the 2008 -2014 PCLCD.

The International Association of Machinists ("the IAM") also claim the maintenance and repair work on SSA's passenger ship stevedoring and terminal service power equipment at Terminal 91 in Seattle. [Jt. Exhibit B/Jt. Exhibit 3, paragraph 8; Tr. 12:2-11.] Upon learning that SSA assigned the disputed work to employees represented by the ILWU pursuant to its multi-employer, coast-wide agreement; the IAM grieved and

² In the 2008 Coast-wide negotiations, the PMA and the various ILWU locals agreed that PMA members would be permitted to introduce labor saving robotics in marine terminals. This would eliminate certain traditional longshore work as work once performed manually by ILWU represented employees would be performed mechanically [Tr.49-50:16-19] Essentially, this meant that the ILWU agreed to permit PMA members to continue to automate or mechanize stevedore and cargo handling services and thereby eliminate longshore work in exchange for the PMA agreeing to allow longshoremen to maintain and repair those machines. The PMA represented employers concluded that mechanization of the marine terminals was necessary to remain competitive.

arbitrated the assignment of the disputed work under a collective bargaining agreement between SSA and the IAM, Local 289. On May 8, 2009, the SSA-IAM Arbitrator found that SSA breached the IAM contract by not assigning the work to the IAM and required SSA to make the employees represented by the IAM whole.³ [Jt. Exhibit 12.]

The parties submitted evidence and stipulated that the IAM threatened to picket if SSA assigned/reassigned the disputed work to members of the ILWU. [Tr.12:23-13:10.] On May 12, 2009, SSA received a letter from IAM Local 289's Business Agent, Don Hursey, threatening that the IAM would take all actions necessary to obtain the reassignment of the work to the IAM. [Jt. Exhibit 13.] Additionally, the IAM threatened to engage in concerted activity (including picketing) if SSA did not reassign mechanics work at Terminal 91 from employees represented by the ILWU to its IAM represented employees. [Tr. 31:18-32:22.] Clearly, the IAM's conduct constitutes a threat to engage in conduct proscribed by Section 8(b)(4)(D) of the National Labor Relations Act.

In response to the IAM's efforts to secure the reassignment of the work, counsel for the ILWU, Rob Remar, wrote to PMA senior counsel stating that the ILWU rejected the IAM arbitration award and demanded maintenance of the status quo and that the work remain with the ILWU. [Jt. Exhibit 14; Tr. 33:12-17.] More specifically, Remar stated that the ILWU would pursue "all available and appropriate remedies" to ensure that M & R work at the Seattle Cruise Terminal remained with the ILWU under the Coast Contract.

³ It should be noted that Arbitrator Cavanaugh did not order SSA Marine to assign the work to the IAM, but only to provide monetary make-whole relief -- essentially pay-in-lieu. The Arbitrator made clear he did not have authority to interpret the ILWU-PMA PCLCD and to evaluate which unions' members had a better claim under Section 10(k) to take the work away from the employer's or company's preference. [Jt. Exhibit 12.]

Thus, both the IAM and the ILWU are demanding that SSA assign the disputed maintenance and repair work to employees represented by their respective unions. *See Hudson General Contractors*, 326 NLRB No. 15 (1998) (Board found jurisdictional dispute between competing unions where one union demanded arbitration and the other union claimed the work but subsequently revoked its earlier threat of a strike to retain the assigned work).

The parties have also stipulated that there is no agreed-upon voluntary method to resolve this jurisdictional dispute as there is no joint board and none of the parties have agreed to a tripartite arbitration to resolve the dispute. [Tr. 12:12-20.]

Therefore, the instant case is appropriate for Board determination pursuant to Section 10(k) of the Act. *See, e.g., United Brotherhood of Carpenters and Joiners of America, Local 275*, 334 NLRB No. 67 (2001) (before the Board may proceed with a determination of a dispute pursuant to Section 10(k) of the Act, it must be satisfied that: (1) there are competing claims for the work; (2) there is reasonable cause to believe that Section 8(b)(4)(D) has been violated; and (3) the parties have not agreed on a method for the voluntary adjustment of the dispute). Indeed, all parties stipulated to the use of the 10(k) proceeding to settle this dispute and the appropriateness of this process under these factual circumstances. [Tr.10-14; Jt. Exhibits 2 and 3.]

As such, SSA requests that the Board decide what is clearly a jurisdictional dispute based on the consideration of the traditional assignment of work factors. *See, United Union of Roofers, Waterproofers & Allied Workers, Local 189*, 259 NLRB 1320, (1982) (holding that "Section 10(k) of the Act requires that the Board make an affirmative award of disputed work after giving due consideration to various factors").

Further, SSA requests that the Board maintain the status quo and preserve the assignment of the work to the ILWU-represented employees, which is the assignment the Employer prefers.

II. FACTUAL BACKGROUND

A. Disputed Work

The maintenance and repair work at Pier 91 currently involves the maintenance and repair of the following equipment: approximately five Grove R.T. 500 Series cranes; approximately fourteen Mitsubishi electric pallet jacks; approximately three Clark electric forklifts; approximately four electric golf carts; approximately sixteen Hyster and Mitsubishi propane forklifts; approximately two Hyster diesel forklifts; approximately three Ford Econoline shuttle vans; and approximately one each of the following: 15-ton Hyster forklift; Ford-350 service truck; Ford Super Duty fuel truck; Ford Ranger for marine clerks; Chevy S-10 for marine clerks; cold ironing equipment for ship power; two large and complex passenger gangways; and certain specialized platforms used in loading and unloading ship stores, baggage, and other equipment on and off the passenger vessels calling at Pier 91. [Jt. Exhibit B, paragraph 19.]

B. Employer

The Employer, SSA, operates marine cargo terminals along the western seaboard of the United States and throughout the world. For over 40 years, SSA, its affiliates, and its predecessors have operated and managed terminals and provided stevedore services at various ports located on the Puget Sound in Washington. [Jt. Exhibit B/Jt. Exhibit 3, paragraph 6.] SSA started in the Puget Sound as Bellingham Stevedoring Company and Seattle Stevedore Company. (Jt. Exhibit 15, Everett Tr. 205.) In approximately 1984,

Seattle Stevedore Company changed its name to Stevedoring Services of America ("SSA"). [Jt. Exhibit 15, Everett Tr. 205-206.] In 2003, SSA changed its name to SSA.

SSA Pacific, a subsidiary of SSA Marine, currently provides stevedoring and related services at the cruise terminal in Seattle, located at Pier 91. [Jt. Exhibit B/Jt. Exhibit 3.] The details of the work assignments at Pier 91 are controlled by SSA through a contract with Harbor Industrial. Harbor Industrial, like SSA, is a member of the PMA and employs ILWU mechanics in the ILWU-PMA coast-wide longshore bargaining unit. Nonetheless, all parties stipulate that the ILWU mechanics currently working at Pier 91 are employees of SSA for purposes of the 10(k) Hearing because SSA assigns and controls the details of the work. [Jt. Exhibit B, paragraphs 6 and 7.]

C. The ILWU

SSA has utilized ILWU represented employees for more than 40 years to provide stevedoring and terminal related services along the waterfront. A majority of SSA's employees are in fact represented by the ILWU. In the Seattle area alone, SSA employs anywhere between ten and several hundred ILWU represented employees each day depending whether ships are in port. [Tr. 35.] Unlike the IAM represented employees, many of the ILWU represented employees are not steady employees, but instead are hired for temporary work out of the ILWU dispatch hall. This permits SSA to effectively respond to its labor needs which fluctuate considerably depending on whether or not a ship is in port. SSA bargains with the ILWU through the Pacific Maritime Association ("PMA"), which is a multi-employer bargaining representative. Through the PMA, SSA has contract obligations under multi-employer collective-bargaining agreements with three ILWU locals in the Puget Sound - a foreman's local, a clerk's local and a longshore

local. [Tr. 146.] Local 19, the longshore local in the Seattle area, includes traditional longshore work such as operating cargo handling equipment to load and unload vessels. Longshoremen perform the traditional longshore work. Mechanics are traditional longshoremen that have registered with the ILWU to maintain and repair cargo handling equipment for PMA members. [Tr. 146.] The various longshore categories interact. The foreman supervises longshoremen, and the clerks perform the paperwork and assist the longshoremen in controlling the flow of cargo. [Tr. 35.]

ILWU members have performed maintenance and repair work since the 1930s, when the Board certified the multi-employer bargaining unit. And, for more than thirty years, PMA and the ILWU have been including in their collective-bargaining agreement provisions specifically addressing the union's jurisdiction over that work. [Tr. 29; 37:1-9; 47:6-48:13;146:4-6; 154:14-23.] As a consequence, ILWU represented mechanics were performing maintenance for SSA in several ports along the West Coast and for other PMA members in Seattle for years before this dispute arose. [Tr. 29-30] The ports in which the ILWU represented mechanics perform maintenance and repair work for SSA include San Diego, Portland, and certain smaller ports such as Coos Bay and the Port of Angeles. [Tr.30.]

SSA and its predecessors have been a party to the collective bargaining agreement with ILWU through the multi-employer bargaining unit agent, the PMA, since the 1940s. In the 2008 Pacific Coast Longshore Negotiations, the PMA and the ILWU reached an agreement whereby the ILWU would permit member employers of the PMA to introduce labor-saving robotics in their stevedoring operations; concurrently, the PMA's members' agreed to utilize ILWU represented mechanics at all "new facilities." [Tr. 51-52; Jt.

Exhibit 9, Section 1.72 and Jt. Exhibit 10.] SSA, in compliance with that agreement, assigned the disputed maintenance and repair work on power equipment at the new passenger terminal at Terminal 91 in Seattle to ILWU represented employees. Thus, ILWU represented employees have gained work at new facilities in exchange for the loss of other traditional longshore work. Members of the PMA in turn received needed flexibility to automate through the introduction of fully mechanized marine terminals, potentially saving labor costs by reducing the need for equipment operators and other traditional longshoremen. [Jt. Exhibit 9, Section 1.72.]

D. The IAM

SSA has a history of assigning certain maintenance and repair work on SSA owned or leased cargo-handling equipment to the IAM represented mechanics at several ports on the West Coast. In the Puget Sound area which includes Seattle, SSA and its predecessors and affiliates have had collective bargaining agreements with the IAM that have covered all maintenance work involving equipment including power equipment and container equipment owned and leased by SSA. (Container equipment maintenance is sometimes referred to as CEM work). In the Seattle area, SSA employs approximately 70 to 80 IAM represented mechanics, who predominantly operate out of centralized shops located at Terminal 18. [Tr. 35:2-7.] The IAM represented employees are steadily employed. The Terminal 18 based employees either travel to terminals where the power equipment is located to make necessary repairs or the equipment is transported by ILWU represented employees to Terminal 18 where the IAM represented mechanics will make the repair. At Terminal 18 there is a crane shop/facility, a power equipment shop and a CEM facility.

Specifically, SSA has a collective bargaining agreement with District Lodge 160, Local Lodge 289 of the IAM that covers the Puget Sound that states, "IAM-represented employees will maintain and repair all equipment owed or leased by SSA in the Puget Sound area." [Jt. Exhibit B, 5.]

E. Pier 91

Until recently, Terminal 91 was an open pier and yard. A few years ago, the Port of Seattle determined that it could attract and maintain additional cruise ship business by building a more modern passenger terminal with on-site parking and an expanded processing center. Therefore the Port decided to construct a new cruise ship passenger terminal at the Smith Cove Terminal at Pier 91. The new building structures were completed in approximately April 2009, and Pier 91 began operating on a regular basis as a cruise ship terminal on April 24, 2009. See the video concerning the construction and creation of the new Pier 91 cruise lines facilities at the Port of Seattle. [ILWU Exhibit 1.]

The new terminal occupies 143,000 square feet with two berthing facilities.

Additionally ramps were built and brought to Pier 91 to facilitate passengers boarding the cruise ships. [Tr. 173-174.] These ramps, also referred to as gangways, are very large, complicated and expensive machines. [Tr. 25:11-14; 103:22-104:5.] They had not previously been used at the Port of Seattle and the IAM mechanics that had performed maintenance and repair on cruise vessels prior to April 24, 2009 had not performed maintenance and repair on this equipment. [Tr.103:22-104:11.]

There is no evidence that SSA ever conducted passenger cruise ship operations at Terminal 91 before the current dispute arose. Indeed, before the current April to October 2009 cruise season, SSA's operations at Terminal 91 were limited to auto carriers,

refrigerated cargo and frozen cargo, including fish that came off of fishing vessels. Significantly, SSA had not operated at Pier 91 for fifteen to twenty years before the current cruise season.

SSA in consultation with the PMA determined that the newly constructed passenger terminal qualified as a "new terminal" for purposes of the ILWU collective bargaining agreement as Pier 91's identity had clearly undergone a "fundamental" change in both purpose and its construction. As a result, SSA, in consultation with the PMA, concluded that the company was obligated under Section 1.731 of the PCLCD to assign the maintenance and repair work on power equipment at Pier 91 to employees represented by Local 19 of the ILWU.

Since April 24, 2009, SSA has assigned the maintenance and repair work to ILWU represented mechanics at Pier 91. This work was available during the April — October cruise season. During the work week, SSA typically needs just one ILWU represented mechanic as a single mechanic is sufficient to perform the maintenance and repair work at Pier 91. SSA typically utilizes ILWU mechanic John Castronover, an experienced mechanic for this steady work. SSA needs to employ additional mechanics only during the weekends when the cruise ships are in Port. During such time, SSA obtains the additional mechanics from the ILWU dispatch hall.

SSA Senior Vice-President Ed DeNike⁴ testified that the ILWU has performed this work since Pier 91 regularly began to function as a cruise ship terminal on April 24, 2009, that maintenance and repair at Terminal 91 has gone smoothly, and that SSA had

⁴ Senior Vice-President Ed DeNike's duties include determining work assignments for employees, a task he has been involved with for over forty years with SSA Marine and its affiliates. [Tr. 24-26.] He is familiar with the contracts of both the ILWU and the IAM.

not heard any complaints regarding ILWU mechanics performing the maintenance work. Further, Mr. DeNike indicated that SSA's prefers to continue to use the ILWU represented employees continue to perform the maintenance and repair work at Pier 91.

[Tr. 33:2-34:18.]

III. THE NLRB'S TRADITIONAL FACTORS WEIGH IN FAVOR OF ASSIGNING THE DISPUTED PASSENGER TERMINAL MAINTENANCE AND REPAIR WORK TO MECHANICS REPRESENTED BY THE ILWU

The Board makes a common sense evaluation balancing a number of relevant factors in determining which union to assign the work. Relevant factors the Board considers include: collective bargaining agreements and certifications, past practice, relative skill, industry and area standard, employer preference and assignment, economy and efficiency of operation, and gain or loss of employment. J.A. Jones Construction, 135 NLRB 1402 (1962); Holt Cargo Systems, Inc., 309 NLRB 377 (1992) (gain or loss of employment).

The traditional factors the Board consider balance in favor of assigning the disputed work to mechanics represented by the ILWU. In particular, the important

its business interests and responsibilities with other employers in the unit, and, for the group's benefit, has agreed to honor agreements that it, alone, did not negotiate.

⁵ This case is clearly one that is appropriate for resolution under Section 10(k) of the Act because both Unions have stipulated that (1) they claim the disputed work; (2) neither party is certified by the Board to perform the work; (3) the IAM has threatened to picket if the work is not reassigned to employees represented by the IAM; (4) there is no voluntary method to resolve this dispute; (5) the dispute is clearly not representational as the dispute is over which group of employees (ILWU or IAM) and not which Union represents employees; and (6) all parties have stipulated to the use of the 10((k) proceeding to resolve the dispute. See Jos. Berning Printing Co, 331 NLRB 846, fn.4 (2001) Further this assignment is perfectly appropriate because SSA Marine is party to a multi-employer bargaining organization, the PMA, which differentiates it from a single employer unit. An employer, such as SSA, in a multi-employer unit, has closely aligned

traditional factors of the employer's preference, the status quo of the assignment, and the gain and loss of work from reassignment favor assigning the work to ILWU.

A. The Important Employer Preference and Current Assignment
Factors Strongly Favor Continuing to Assign the Work to the ILWU
Represented Mechanics

SSA assigned ILWU-represented employees to maintain and repair the company's equipment at Pier 91 as soon as the new passenger terminal opened. That assignment resulted from a rational business decision. SSA realized that it was in the best interest of the industry to begin to assign maintenance and repair work to ILWU represented employees at new terminals as this permitted PMA represented employers to introduce robotics and increase efficiency. [Jt. Exhibit B/Jt. Exhibit 10 and Jt. Exhibit 9, Section 1.72 and 1.731.] Counsel for both Unions stipulated that friction existed between the ILWU and the IAM and their respective members. [Tr. 76:8-14.] Thus, preserving the status quo would reduce tension between the ILWU-represented workers and the IAM-represented workers. Specifically, at least with respect to Pier 91, tension would be reduced as it would eliminate the need for the ILWU represented longshoremen that operate the passenger stevedore and cargo handling equipment from needing to interact with IAM represented mechanics at Terminal 91. Moreover, it would enable SSA to use the ILWU dispatch hall to flexibly fill short-term labor needs. [Tr. 45-46.]

In sum, SSA is satisfied with the current assignment and prefers that employees represented by the ILWU continue to do the maintenance and repair work on power equipment at its Terminal 91 facility. Thus, SSA wishes to maintain the status quo and it continues to prefer to assign the maintenance and repair of passenger ship stevedoring and terminal service power equipment at Pier 91 to the ILWU-represented mechanics and

not to the IAM-represented workers, who were never assigned that work at the new cruise ship terminal.

The Board accords considerable weight to the employer's uncoerced preference. See Brady Hamilton Stevedore, 244 NLRB 275, 276 (1979). In fact appellate courts have noted that the Board almost uniformly assigns work in accordance with an employer's stated preference. See NLRB v. International Longshore and Warehouse Union, Local 50, 504 F.2d 1209 (9th Cir. 1974)("The Board's work award coincides in virtually every case with the employer's preference.). Consequently, the factor of employer preference unequivocally favors assignment of the work to employees represented by the ILWU.

B. The Loss of Employment Factor Also Favors an Award of the Disputed Work to the ILWU Represented Mechanics

One ILWU represented mechanic currently performs the maintenance and repair on the SSA owned and operated equipment at Pier 91 on weekdays and at least a portion of the weekends and an additional one or two others mechanic hired through the joint dispatch hall perform the work on weekends when the cruise ships are in Port. [Pier 91Tr. 45-46.] In the instant case, the steady work has been assigned to ILWU mechanic John Castronover. Castronover transferred from Bridge Warehouse to perform the power mechanic work for SSA at Pier 91. [Tr. 183-184.] Displacing him from this job would result in the layoff of at least one additional ILWU represented mechanic from Castronover's employer Bridge Warehouse. [Tr. 190-192.]

Assignment of this work to mechanics represented by the ILWU has not resulted in the layoff of any IAM represented employees as they have not performed this work since the facility opened. [Tr. 53:21-54:4.] Even if the work was reassigned to IAM represented mechanics, it would not result in the hiring of any additional IAM-

represented mechanics, as those currently employed would perform the work. [Tr. 82:22-83-2.]

Thus, reassignment of this work would clearly result in the layoff of an ILWU represented mechanics, but would not have such an effect on IAM represented employees.

This factor squarely favors continuing the assignment of the disputed work to mechanics represented by the ILWU. See Holt Cargo, 309 NLRB 377 (1993) (Board concluded the factor of gain or loss favored neither the ILA nor the Laborers who were assigned the work because neither the Laborers nor the employer indicated that reassignment of the work would result in lost work as the Laborers also performed other functions for the employer and because the ILA failed to demonstrate the loss of work would displace any permanent employee.). See also Rail Distribution Center, 310 NLRB 1 (1993) (Board determined that the gain or loss factor favored awarding work to the Teamsters where the Teamsters were currently performing the disputed work and where the assignment of that work would not result in any discernible loss to the employees represented by the ILA because they did not and had never performed the disputed work.).

C. The Industry and Area Practice Factor Supports Awarding the Work to the ILWU Represented Mechanics

The parties have stipulated that in Seattle the majority of maintenance and repair work is performed by the IAM while at the nearby similarly sized Port of Tacoma and some Puget Sound facilities, most maintenance and repair work is performed by employees represented by the ILWU in the ILWU-PMA coast-wide bargaining unit. [Jt. Exhibit B, paragraph 18.] PMA Area Manager Joe Weber testified that there are

approximately 500 ILWU represented mechanics in the PMA-ILWU coast-wide unit with roughly 30 in Seattle and another 125 in nearby Tacoma, Washington. [Tr. 146-147.] Although IAM represented employees have performed maintenance and repair work at some of SSA's West Coast ports, ILWU represented mechanics have worked for SSA at the ports of San Diego, Portland, Coos Bay, Port of Angeles, and other similar smaller ports. [Jt. Exhibit B, paragraph 18.] Therefore, the industry and the area practice at least support assigning the disputed work to the ILWU and certainly do not disfavor awarding the disputed work to them.

D. The Relative Skills Factor Supports Awarding the Work to the ILWU Represented Mechanics

The ILWU represented mechanics possess the skills necessary to perform maintenance and repair work on SSA owned and operated power equipment. SSA Senior Vice-President Ed DeNike testified that SSA was satisfied with the ILWU represented mechanics performance of the disputed work, that the work was running smoothly, and that he had heard of no complaints with regard to ILWU represented employees' performance of this work and that the ILWU represented mechanics possessed the necessary skills and competence to perform the disputed work. [Tr. 33:23-34:18; 46:23-47:7; 63:7-10.]

Darrel Stephens testified that SSA mechanics had very broad set of mechanical skills and abilities and that typically the mechanics had experience in other shops or industries. [Tr. 317:23-318:2] SSA's power mechanics typically do brake work, hydraulic work and engine transmission maintenance. The skill sets SSA looks to in filling a power mechanic position usually includes welding and cutting skills, electrical

diagnosis and trouble shooting skills and hydraulic skills. According to Stephens these skills make a well-rounded mechanic. [Tr.316:21-318:6.]

John Castronover, the ILWU-represented steady mechanic at Pier 91, has over twenty years experience working as a mechanic or technician performing maintenance and repair work on terminal cranes and other terminal equipment including side loaders, tractors, chassis, hustlers, container lift equipment, and experience working with electrical lighting circuits, reefer generator sets and ABS air brake systems. [Tr. 187:4-9; ILWU Exhibit 9.] Additionally, Castronover has obtained certifications in electrical circuits and components, electrical troubleshooting, service of fan drives, diesel mechanic training and theory, welding, hydraulics, and maintenance and repair of engines. [ILWU-9.] These skills and training are of the type of skills and training that SSA traditionally looked for in hiring mechanics. [Tr.316:21-318:6] Thus, the ILWU mechanics, like Castronover, have the very skills sets that SSA previously utilized in acquiring mechanics prior to SSA's assignment of the disputed work to the ILWU, and these skills sets can readily be found in mechanics that are not members of the IAM and do not work in stevedoring and marine terminal industry. [Tr 339:12-340:5.]

Additionally, SSA can solicit applications from outside the union to fill those positions if there are no mechanics available on the dispatch hall to fill a power mechanic position. [Tr. 155-156.] In two letters of understanding between Ed Flynn of the PMA and James Herman of the ILWU dated January 17 and March 24, 1980, the PMA and the ILWU agreed that PMA member employers could acquire qualified mechanics from outside the bargaining unit if no such qualified mechanics were otherwise available and granting those employees registration in the ILWU upon the completion of three, four or

five months continuous service with a PMA member employer. The purpose of these letters of understanding was to assist PMA member employers in compliance with Section 1.7 of the 1978 PCLCD which required member employers to use ILWU represented mechanics. [ILWU Exhibit 2,Tr. 155: 2-16.] These letters of understanding are still in effect. [Tr.156:9-10, 1-13.]

Alternatively, an employer short of qualified mechanics can acquire skilled mechanic from the ILWU-represented workforce by having the mechanics travel from other ports or transfer from different employers in the same port, or transfer from different ports, or solicit mechanics from outside the ILWU-PMA coast-wide bargaining unit. For instance, in Seattle alone there are roughly 30 ILWU represented steady mechanics some of whom are power equipment mechanic and close to another 50 that have mechanical skill and experience. [Tr.241:20-242:2.] Presently there are roughly an additional 125 ILWU represented mechanics in nearby Tacoma and at least 500 additional mechanics in the coast-wide bargaining unit. [Tr.146:20-147:7.] Thus, SSA has a large pool of ILWU represented mechanics on which to find a qualified power mechanic.

Those rights were secured by the PMA in a series of letter of understandings with the ILWU. [ILWU Exhibit 2.] If qualified mechanics are working for another employer, the acquiring employer may secure the services of the qualified mechanics through the transfer of mechanics from the other employer. Section 6.36 of the 2003 Supplementary Agreement Between the Pacific Maritime Association and Local 19 of the International Longshore and Warehouse Union for Seattle Mechanic to the PCLCD permits this. [Tr. 161-162; ILWU Exhibit 4.] Further, an employer may secure the transfer of qualified

mechanics from other ports if necessary. [Tr. 162.] Moreover, a letter of understanding [ILWU Exhibit 6] attached to the 2008 collective bargaining agreement specifically requires that mechanics positions at new terminals be posted mechanics positions at all dispatch halls. [Tr.180:8-14.] Thus, SSA has numerous means to acquire skilled ILWU represented mechanics. SSA utilized one of these mechanisms when it secured the transfer of skilled mechanic John Castronover from Bridge Warehouse to SSA to perform the power maintenance work at Pier 91. [Tr. 183-184.]

Neither union has any specific training limited to its particular workforce. Under both the PCLCD and the SSA-ILWU contracts permit employees to take courses at local community colleges or to attend equipment specific training. Although the IAM contract provides for an apprentice program whereby mechanics acquire job related skills, IAM represented mechanics have not taken advantage of the program in a number of years and SSA conceded that there would be room for just a single apprentice at a time.

Thus, the qualifications of the ILWU represented mechanics support assigning the disputed work to the ILWU workers and certainly do not disfavor awarding the disputed work to them.

E. The Economy and Efficiency of Operations Factor Supports Assigning the Work to the ILWU Represented Mechanics

SSA has operated efficiently since it began utilizing ILWU represented mechanics to perform the cruise ship-related maintenance and repair work at Terminal 91 in Seattle in April 2009. Further, SSA is satisfied with the efficiency of the ILWU represented mechanics. Moreover, ILWU represented mechanics provide certain efficiencies over the IAM represented mechanics in that SSA can station an ILWU represented mechanic at

Pier 91 during the cruise season. Even if mechanic work is unavailable at Pier 91 for the ILWU represented mechanic, SSA can utilize the steady mechanic to perform some other longshore work at Pier 91, work that the IAM mechanics could not perform. [Tr.166:24-167:8.] If work was slow at the cruise ship terminal the IAM mechanic would need to return to Terminal 18 to find other mechanic work, otherwise the IAM mechanic would be paid to remain idle. Further, this means the IAM mechanics cannot respond to calls for repairs as quickly as the ILWU represented mechanic who is on-site. Consequently, the operational efficiency of the ILWU mechanics supports assigning the disputed work to the ILWU represented mechanics and certainly does not disfavor awarding the disputed work to them.

F. The Collective Bargaining Agreement and Certification Factor Supports Assigning the Work to the ILWU Represented Mechanics

The parties have stipulated that there is no certification covering the disputed work. [Tr. 11:17-12:1.] Thus, this factor does not favor the award of the work to employees represented by either union.

For over thirty years, the ILWU's collective bargaining agreement with SSA and negotiated by the PMA, the Pacific Coast Longshore Contract Document (PCLCD) provides in relevant part in Section 1.71 that the contract "applies to the maintenance and repair of all stevedore cargo handling equipment." [Jt. Exhibit 9.] Further on July 1, 2008, the PMA and the ILWU entered into a Memorandum of Understanding (MOU)

⁶ Moreover the various longshore classifications interact with the mechanics on a daily basis. For instance, if the longshoremen that are driving or operating a forklift or other power equipment at Pier 91, that driver might go directly to the ILWU represented mechanic to see if the mechanic can make the repair. [Tr. 37:16-19.] Utilizing more than one union to perform work at the terminal increases the odds that there might be conflict between the unions.

setting forth an agreement for the years 2008-2014, whereunder maintenance and repair work on equipment used at a "new" facility would be assigned to ILWU mechanics under the terms of the MOU in exchange for the introduction of robotics and other labor-saving technologies, as well as for other union concessions. [Jt. Exhibit B/Jt. Exhibit 10 and Jt. Exhibit 9, Section 1.72 and 1.731.] The MOU further permits the terminal operator of listed "red circled" terminals that have a direct collective bargaining agreement with another union as of July 1, 2008 to vacate the red circle facility and to relocate its operations to another facility. [Jt. Exhibit 9, Section 1.81.]

Specifically, Section 1.731 of the 2008-2013 PCLCD provides in pertinent part:

In accordance with Section 1.7, 1.71,1.72, and 1.73, the maintenance and repair work on all new marine terminal facilities that commence operations after July 1, 2008, shall be assigned to the ILWU. New marine terminals shall include new facilities, relocated facilities and vacated facilities.... [Jt. Exhibit 9.]

Section 1.731 of the PCLCD clearly applies in the instant case as the Port constructed a "new facility," the passenger terminal, at Pier 91. The IAM did not perform any cruise ship related maintenance at Pier 91 as the pier was not a passenger cruise ship terminal and SSA had not regularly utilized the Pier in fifteen to twenty years before April 24. As note above, Pier 91 prior to its conversion to a passenger terminal was simply an open pier and field that included warehouses. There was no passenger terminal at the location. The Port of Seattle constructed a 142,000 square foot structure at the facility to specifically serve as a passenger terminal. Additionally, two modern mechanized gangways were specifically fabricated and installed at Pier 91 to enable passengers to board and leave the cruise vessels. [Tr.25:11-14.] These gangways were very complicated and unlike any gangways previously utilized at the Port of Seattle. Moreover, Section 1.81 of the PCLCD does not provide an exception in this instance to

the use of the ILWU represented mechanics to perform this maintenance and repair work as the extent of the changes and the conversion of the facility to a passenger cruise terminal clearly constitutes a "fundamental change" to the use of the facility. Thus, the collective bargaining agreement between SSA and the ILWU at least supports assigning the disputed work to the ILWU workers and certainly does not disfavor awarding the disputed work to them.

G. The Company's Past Practice Supports Assigning the Work to the ILWU Represented Mechanics

While SSA assigns maintenance and repair work to the IAM represented mechanics in the Port of Seattle and some other Ports in the coast-wide unit, ILWU represented employees perform maintenance and repair work for SSA and for other employers at various ports all along the west coast under the coast-wide agreement. Specifically, ILWU represented mechanics perform maintenance and repair for SSA in the Ports of San Diego, Portland, Coos Bay, Port of Angeles, and other similar smaller ports. [Tr 30.] Moreover, SSA's past and current practice since April 2009 at Pier 91 in Seattle has been to assign maintenance and repair work on SSA owned and operated equipment to ILWU represented employees. Thus, SSA's coast-wide unit past practice of assigning maintenance and repair work is ambiguous. Therefore, this factor does not disfavor assigning the disputed work to ILWU represented employees; consequently, this factor supports assigning maintenance and repair work on SSA owned and operated cargo handling equipment at Pier 91

IV. CONCLUSION

Based on the evidence presented and entered into the record, SSA respectfully

requests that the Board issue a Determination of Dispute, and render a work assignment

based on the traditional 10(k) factors of employer preference, assignment of the work,

and loss of employment to the employees represented by ILWU, Local 19. See Holt

Cargo, 309 NLRB 377 (1992) (Board awarded disputed work on the basis of employer

preference and economy and efficiency of operation despite past practice favoring award

of work favoring the other union); see also NLRB v. ILWU Local 50, 504 F.2d 1209,

1220 (9th Cir. 1974) (Court noted that the Board's work award coincides in almost every

case with the employer's preference).

Respectfully Submitted By:

GORDON & REES LLP

Dated: July 24, 2009

2009

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Proof of Service

I hereby certify that on this 24th day of July 2009, I caused the original of the foregoing SSA Marine's Post-Hearing Brief to be filed with the National Labor Relations Board via e-filing to:

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Richard Ahern National Labor Relations Board, Region 19 2948 Jackson Federal Building 915 Second Avenue Seattle, WA 98174

On this same date, I caused a true and correct copy of the same to be served via email to:

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